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BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

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LIANG, REGINA	

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ptomail1@bakerbotts.com
glenda.orrantia@bakerbotts.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID L. MARVIT and ALBERT H. REINHARDT

Appeal 2009-002498
Application 10/807,572
Technology Center 2600

Decided:[1] July 22, 2009

Before MAHSHID D. SAADAT, CARLA M. KRIVAK,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-4, 7-11, and 13-21. Claims 5, 6, and 12 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to a motion controlled handheld device using motion as an interface. A gesture database maps the motion of the handheld device to a particular corresponding symbol gesture representing an input for the application. (*See* Spec. 3.) Claim 1 is illustrative of the invention and reads as follows:

> 1. A motion controlled handheld device comprising:
>
> a display having a viewable surface and operable to generate an image;
>
> a gesture database maintaining a plurality of gestures, each gesture defined by a motion of the device with respect to a first position of the device, the gestures comprising symbol gestures each corresponding to a character from a preexisting character set;
>
> an application database maintaining at least one application;
>
> a gesture mapping database comprising a gesture input map for the application, the gesture input map comprising mappings of the symbol gestures to corresponding inputs for the application;
>
> a motion detection module operable to detect motion of the handheld device within three dimensions and to identify components of the motion in relation to the viewable surface;
>
> a control module operable to load the application, to track movement of the handheld device using the motion detection module, to compare the tracked movement against the symbol gestures to identify a matching symbol gesture, to identify, using the gesture input map, the corresponding input mapped to the matching symbol gesture, and to provide the corresponding input to the application;
>
> wherein a set of the inputs map to commands of the application; and

wherein the symbol gestures are logically associated with names of the commands.

The Examiner relies on the following prior art references:

Mosttov WO 03/001340 A2 Jan. 3, 2003

Claims 1-4, 7-11, and 13-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Mosttov.

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Briefs and Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants did not make in the Briefs have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ISSUE

With respect to the independent claims, Appellants argue that the portions of Mosttov relied on by the Examiner do not disclose "that a symbol gesture is logically associated with a name of an application command." (App. Br. 15.) Appellants contend that the keystroke "x" in Mosttov "is merely the name of a keystroke and not the name of an application command." (*Id.*) The Examiner responds that the application interprets and defines a keystroke as a command (Ans. 5).

Therefore, Appellants' contentions and the Examiner's arguments present the following issue:

Have Appellants shown that the Examiner erred in finding that Mosttov discloses symbol gestures that are associated with a name of an application command, as recited in independent claims 1, 9, 15, and 21?

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

1. Claim 1 requires mapping the inputs to commands of the application and that the symbol gestures are logically associated with names of the commands. (Cl. 1.)

2. Mosttov relates to a gesture recognition system wherein the received inertial data is determined to represent a gesture from a class of gestures. (Mosttov, Abstract.)

3. With respect to Figure 2, Mosttov describes the system for gesture recognition. (Mosttov, 7:26 – 8:23.)

4. Mosttov, in page 8, lines 4-16, discloses that:

> Once the parser 24 identifies the gesture, it generates a token 26 that is directed to an application 28 running on the electronic device 10. The tokens generated by parser 24 represent specific gestures, but the command or data represented by the tokens are left undefined. Instead, the tokens are interpreted by the application 28 (although the tokens might have default interpretations given by an operating system or by the parser, e.g., an "x-gesture" is interpreted as the keystroke "x"). This permits different applications to assign different actions or meanings to the tokens. For example, one application can assign a token for a shaking motion to a command to close the application, whereas another application can assign a token for a shaking motion to a data input, such as a letter or number.

5. The Examiner found that the "x-gesture" of Mosttov is logically associated with names of the command since the "x-gesture" is interpreted by the application 28 as a keystroke "x," where "x-gesture" is the symbol gesture and keystroke "x" is a command for entering "x." (Ans. 5.)

PRINCIPLES OF LAW

1. Scope of claims

The claim construction analysis begins with the words of the claim. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Philips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). The scope of the claims in patent applications is determined not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

2. Anticipation

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76, 1377 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992). *Also see In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994). "Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed. Cir. 1999) (quoting *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 781 (Fed. Cir. 1985)).

ANALYSIS

Initially, we observe that claim 1 merely requires some kind of mapping between the set of inputs and the commands of the application. Further, the claimed term "logically associated" does not preclude associating the same symbol gesture to other functions or commands in another application. *See* FF 1. We also find that Appellants have not pointed to any portion of the Specification for specifically defining how the inputs are mapped or how the logical association with names of the commands delimits the commands to the commands of only one application.

Based on our review of Mosttov and the breadth of the recited language in claim 1, we disagree with Appellants' argument (App. Br. 15) that the claimed limitation of "symbol gestures are logically associated with names of the commands" does not read on the assignment of the gesture to a command in Mosttov. In particular, we find that the claimed term "logically associated" does not require any specific relationship between the symbol gesture and the command, as long as some kind of association exists between them.

Mosttov determines gestures from their inertial data and uses a system for their recognition (FF 2-3). Mosttov further discloses that, while some gestures have default interpretations, different applications may assign different commands to each gesture (FF 4). Therefore, once an application is selected, each gesture is associated with a command name, and as a result, that command is executed (*id.*). As argued by the Examiner (Ans. 5), the relied on portion of Mosttov discloses that gestures are interpreted as keystrokes, which means that a particular "x" symbol gesture is "logically associated" with a command name for entering letter "x" (FF 5).

Based on the teachings of Mosttov, we disagree with Appellants' arguments (App. Br. 15-16) and find that once an application is entered, the system disclosed by Mosttov associates each gesture with the name of a command (FF 4). Therefore, contrary to Appellants' argument (Reply Br. 2) and even if a keystroke is used for entering a letter, we agree with the examiner that the symbol gesture is interpreted by the application as a command to enter letter "x," which is the same as the name of a command (FF 5).

In view of the above discussion, since all of the claimed limitations are present in the disclosure of Mosttov, the Examiner's 35 U.S.C. § 102(b) rejection of independent claims 1, 9, 15, and 21, as well as dependent claims 3, 4, 7, 8, 10, 11, 13, 14, and 16-20 which are not separately argued by Appellants (App. Br. 16), is sustained.

CONCLUSION

Because Appellants have failed to point to any error in the Examiner's position that Mosttov discloses symbol gestures that are associated with a name of an application command, we sustain the rejection of all the claims.

ORDER

The decision of the Examiner rejecting claims 1-4, 7-11, and 13-21 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED

gvw

Baker Botts LLP
2001 Ross Avenue
Suite 600
Dallas, TX 75201-2980